

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2151.05  
COMPLAINT INVESTIGATOR: Brian Simkins  
DATE OF COMPLAINT: July 2, 2004  
DATE OF REPORT: July 30, 2004  
REQUEST FOR RECONSIDERATION: no  
DATE OF CLOSURE: September 7, 2004

**COMPLAINT ISSUES:**

Whether the South Bend Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically:

- (a) failing to implement accommodations as described, including:
  - (1) failing to ensure the student did not receive a grade penalty for spelling;
  - (2) failing to ensure the student had written down all assignments;
  - (3) failing to provide a peer buddy; and
  - (4) failing to provide outlines and study guides;
- (b) failing to provide progress reports as specified in the IEP;
- (c) failing to provide assistive technology as described.

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee (CCC) meeting upon the parent's request.

511 IAC 7-27-7(b) and 511 IAC 7-17-72 by failing to ensure the student's teacher of record (TOR):

- (a) regularly monitored the implementation of the student's IEP;
- (b) informed the teachers and others working with the student of their responsibilities in implementing the student's IEP; and
- (c) made sure that the supplementary aids and services and program modifications were provided in accordance with the student's IEP.

511 IAC 7-27-2(a) by failing to convene the CCC at a date, time, and place mutually agreed upon by the parent.

511 IAC 7-27-3(a)(1) by failing to ensure the attendance of a qualified public agency representative at the CCC meeting on March 26, 2004.

511 IAC 7-27-4(c)(7) by failing to ensure the CCC considered the results of the student's performance on local assessments, specifically, the student's reading scores as measured by the NWEA.

511 IAC 7-27-6(a)(1) by failing to ensure the CCC addressed the student's present levels of educational performance when developing the student's IEP for the 2004-2005 school year.

511 IAC 7-27-6(a)(2) by failing to include measurable goals, including benchmarks or short term objectives in the student's IEP developed for the 2004-2005 school year.

511 IAC 7-27-6(a)(5) by failing to include the anticipated length and frequency of some of the special education services and modifications.

511 IAC 7-17-38 and 511 IAC 7-17-8 by failing to conduct a current functional behavioral assessment before developing a behavioral intervention plan for the 2004-2005 school year.

#### **FINDINGS OF FACT:**

1. The Student is 13 years old and attends the local intermediate school (the School). The Student is eligible for special education and related services as a student with Other Health Impairment (OHI).
2. The Student's IEP, dated April 30, 2003, indicates on the Instructional Accommodations/Modifications page that the Student is not to receive a spelling penalty. This falls under the category of Grading and the portion allowing for modification notes is blank. The Complainant sent a copy of a Social Studies quiz, dated November 13, 2003, indicating points taken off for spelling errors. The School did not provide any documentation to indicate whether and to what extent teachers were informed of or implemented this accommodation.
3. The April 30, 2003 IEP also contains an accommodation for ensuring the Student has written down all assignments. Specifically, the Student is responsible for maintaining a Daily Assignment notebook that is to be initialed by all teachers. The Complainant alleges that 50 out of 144 assignments for the 2003-2004 school year were stamped, three were initialed and one was signed. No documentation exists to indicate whether and to what extent the Student's teachers implemented this accommodation.
4. The April 30, 2003 IEP also contains an accommodation requiring for the assignment of a peer buddy. This falls under the category of Instructional Strategies, and the modification note section states: "...copy notes with partner...peer buddy with same class...schedule to classes." The School failed to respond to this allegation and did not send any documentation indicating whether and to what extent this accommodation was implemented.
5. The April 30, 2003 IEP also provides for accommodations regarding test study guides and study outlines. The School failed to respond to this allegation and did not send documentation indicating whether and to what extent these two accommodations were implemented.
6. The Student's IEP, dated April 30, 2003, effective August 28, 2003, through June 8, 2004, requires quarterly progress reports for each measurable goal. The Complainant acknowledges and agrees that the Student received quarterly progress reports on all measurable goals involving communication and language from the Speech/Language Pathologist. The TOR is responsible for providing quarterly progress reports on several other academic goals. Documentation shows that quarterly reports were sent to the Complainant on April 30, 2004. All the goals on each page simply contain "ii" which, according to the School's code, indicates the Student is making progress. There is very little explanation or notes to describe the Student's progress.
7. The Student is allowed to make use of an Alpha Smart device on any assignment or project longer than one page. On a page entitled "Provisions Made By Staff For Student To Progress In The School Curriculum", the Occupational Therapist and the school CAT team (Communication and Assistive Technology Team) is responsible for monitoring the function and appropriateness of the Alpha Smart. The Complainant specifically alleges that the Alpha Smart malfunctioned in February of 2004 and was not used for the remainder of the school year. The School failed to respond to this allegation and did not provide documentation indicating whether those responsible for monitoring its use did so.

8. On April 15, 2004, the Complainant hand delivered a letter to the school Principal requesting a CCC to be scheduled by the end of May. The Special Education Director acknowledges that the School failed to respond to this request.
9. Other than copies of a few handwritten memos from the TOR to the Student's teachers, primarily regarding the use of the daily assignment notebook and copies of the School's policy regarding implementation of the IEPs for students with disabilities, the School provided no documentation to demonstrate that the TOR informed the teachers and others working with the Student of their responsibilities in implementing the Student's IEP, regularly monitored the implementation of the Student's IEP, or ensured that the supplementary aids and services and program modifications were provided in accordance with the Student's IEP.
10. Upon receiving the Notice for Case Conference, dated February 18, 2004, for the March 26, 2004, CCC meeting, the Complainant made a written request, dated March 5 to the School to change the scheduled time from 8:00a.m. to 11:15a.m. The Complainant states that it required several phone calls to finally determine a start time. The CCC did convene on March 26, 2004, as scheduled with the Complainant in attendance.
11. The Complainant alleges that neither the school Principal or a designated public agency representative were in attendance at the CCC meeting convened on March 26, 2004. There is a signature on the IEP indicating the Assistant Principal was in attendance as the public agency representative, but it is in the same handwriting as the TOR's signature. The School has otherwise failed to address this allegation, and no documentation has been provided to show whether an appropriate person served on the CCC as the public agency representative.
12. The School acknowledges, and CCC notes confirm, that the CCC did not consider results of the Student's performance on the local NWEA (Northwest Evaluation Association) assessment at the CCC meeting convened on March 26, 2004. The Complainant wished to review reading scores as measured by this local assessment since communication and language skills are important academic needs of the Student as reflected in the Student's IEP.
13. The proposed IEP for the 2004-2005 school year developed at the CCC convened on March 26, 2004, indicates that present levels of performance (PLEP) are addressed. However, what is stated in the IEP with regard to PLEPs is general, particularly in the academic areas outside speech related services, and not based on data driven results to serve as a baseline for the development of goals and objectives. For example, in the academic domain, the PLEP states in part, "[student's name] had very good grades this school year. He has improved with getting to his work." As for student data, various percentages are provided for math and English/Language Arts, but there is no context provided. For example, the PLEP states, "Math 85% of work completed...44% mastery of content in work...71% average for the grading period."
14. The proposed IEP for the 2004-2005 school year indicates that annual goals and short-term objectives are included. However, many of the short-term objectives are not measurable. For example, a representative objective states: "[name of student] will solve tasks using expression and logic at 80% accuracy." The objectives are not measurable statements indicating what the Student is expected to know and be able to do.
15. The original copy of the proposed IEP for the 2004-2005 school year contains a page indicating services will be provided in both the general education and special education settings. There is no statement or specific information regarding the anticipated length and frequency of special education services apart from speech and occupational therapy. It is undisputed that on May 24, 2004, the

Complainant received a phone call from the TOR asking permission to “fix the mechanics” of the IEP. The Complainant agreed as long as nothing substantive was changed without a case conference. Documentation shows that specificity regarding the anticipated length and frequency of all services in the special education setting was subsequently added.

16. The School conducted a Functional Behavioral Assessment (FBA) during the Student’s fifth grade year. The proposed IEP for the 2004-2005 school year will be implemented during the Student’s 8<sup>th</sup> grade year and contains a Behavioral Intervention Plan (BIP) that is based on current behavioral concerns in the intermediate school setting containing grades five through eight. The FBA from fifth grade has not been updated to reflect the Student’s recent behavior problems. Neither the notes from the CCC Report, nor the BIP itself indicate reliance on the old FBA or any updated behavioral assessment. The School’s response to this issue is that the TOR thinks the FBA from fifth grade is still appropriate.

## CONCLUSIONS:

1. Findings of Fact #2 through #7 indicate that the School failed to implement the Student’s IEP, specifically the School:
  - (a) failed to implement accommodations as described, including:
    - (1) failing to ensure the Student did not receive a grade penalty for spelling as shown in Finding of Fact #2;
    - (2) failing to ensure the Student had written down all assignments as shown in Finding of Fact #3;
    - (3) failing to provide a peer buddy as shown in Finding of Fact #4;
    - (4) failing to provide outlines and study guides as shown in Finding of Fact #5; and
  - (b) failed to provide quarterly progress reports as shown in Finding of Fact #6; and
  - (c) failed to provide assistive technology as described, specifically, failing to monitor the use and function of the Student’s Alpha Smart device.

Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to all of the above issues involving implementation of the Student’s IEP.

2. Finding of Fact #8 indicates the School failed to convene a CCC meeting upon the parent’s request. A written request was hand-delivered to the school Principal on April 15, 2004, and no CCC meeting was scheduled. Therefore, a violation of 511 IAC 7-27-4(a)(3) is found.
3. Findings of Fact #2 through #7 and #9 indicate the School failed to ensure the Student’s TOR:
  - (a) regularly monitored the implementation of the Student’s IEP;
  - (b) informed the teachers and others working with the Student of their responsibilities in implementing the Student’s IEP save for a few hand written memorandums regarding the Student’s Daily Assignment Notebook; and
  - (c) made sure that the supplementary aids and services and program modifications were provided in accordance with the Student’s IEP.

Therefore, violations of 511 IAC 7-27-7(b) and 511 IAC 7-17-72 are found.

4. Finding of Fact #10 indicates the School did not fail to convene the CCC meeting scheduled on March 26, 2004, at a date, time, and place mutually agreed upon by the parent. It is undisputed that there was difficulty in arranging a mutually agreed upon start time, but documentation does not indicate that the School was unnecessarily uncooperative. Therefore, a violation of 511 IAC 7-27-2(a) is not found.
5. Finding of Fact #11 indicates the School failed to ensure the attendance of a qualified public agency representative at the CCC meeting on March 26, 2004. In this case, the School failed to respond to the specific allegation and cannot account for why a signature of the school Assistant Principal exists in the

space provided for the public agency representative. Therefore, a violation of 511 IAC 7-27-3(a)(1) is found.

6. Finding of Fact #12 indicates the School failed to ensure the CCC considered the results of the Student's performance on local assessments. Here, the School failed to examine reading scores as measured by the NWEA assessment. Communication and language skills are academic needs as is made clear in the Student's IEP. Therefore, a violation of 511 IAC 7-27-4(c)(7) is found.
7. Finding of Fact #13 indicates the School addressed the Student's PLEPs, but failed to use baseline data to allow the CCC to make data-driven decisions on how best to meet the academic needs of the Student. Therefore, a violation of 511 IAC 7-27-6(a)(1) is found.
8. Finding of Fact #14 indicates the School addressed annual goals, including benchmarks or short-term objectives in the Student's proposed IEP for the 2004-2005 school year, but failed to develop objectives that are measurable statements that precisely indicate what the Student is to know and be able to do based on concrete data. Therefore, a violation of 511 IAC 7-27-6(a)(2) is found.
9. Finding of Fact #15 indicates the School failed to include the length and frequency of some of the special education services and modifications in the Student's proposed IEP. Although, the School subsequently made revisions in late May of 2004 with regard to length and frequency of special education services, this was done without benefit of a CCC meeting. The failure to include the length and frequency is a violation of 511 IAC 7-27-7(a)(5) and it is also a violation of 511 IAC 7-27-4(c) for failing to utilize the CCC to determine length and frequency of services.
10. Finding of Fact #16 indicates the School failed to develop a current BIP that can be implemented with consistency in the Student's intermediate school setting that is based on an updated FBA. In this case, a BIP developed in response to recent behavioral concerns for the Student's 8<sup>th</sup> grade year is ostensibly based on an FBA conducted while the Student was in 5<sup>th</sup> grade. Therefore, a violation of 511 IAC 7-17-38 and 7-17-8 is found.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The South Bend Community School Corporation shall:

1. Convene a case conference committee meeting to review and revise the student's IEP and to:
  - (a) identify the accommodations/modifications to be provided and describe them with sufficient clarity so school personnel working with the student know exactly what is expected in terms of effective implementation of the student's IEP;
  - (b) determine how often progress reports will be provided and what information will be provided the parent;
  - (c) determine whether and to what extent the student will continue to use the Alpha Smart device and, if so, how staff responsible for monitoring will ensure the device is properly maintained and utilized;
  - (d) discuss the student's reading scores as measured by state and local assessments;
  - (e) re-write the student's present levels of performance, particularly in the academic areas outside of speech and occupational therapy, to contain baseline data in addition to other evaluative data to better determine what the student's needs are;

- (f) re-write the students goals and short-term objectives to be measurable statements clarifying what the student is to know and be able to do by certain date; and
- (g) determine whether to conduct an updated FBA to better inform a new BIP that will take into account the Student's current behaviors in the 8<sup>th</sup> grade setting.

A copy of the CCC Report and the agreed upon IEP shall be sent to the Division no later than September 3, 2004.

2. Provide an in-service to all school teachers of record and other special education staff with an agenda that includes, but is not limited to, the following items:
  - (a) the duties and responsibilities of a teacher of record as described in 511 IAC 7-27-7(b) and 511 IAC 7-17-72, including methods for better staff communication, professional development, and documentation of efforts made; and
  - (b) examining research-based best practices in the development, design, and implementation of IEPs, including the writing of quality measurable goals and objectives.A copy of the in-service agenda, notes, handouts, materials, and the attendance sheet shall be sent to the Division no later than September 17, 2004.
3. Send a written memorandum to all relevant school personnel regarding the requirements for organizing and conducting case conference committee meetings as described in 511 IAC 2-27-4(a)(3), 511 IAC 7-27-2(a), 511 IAC 7-27-3(a)(1), and 511 IAC 7-27-4(c)(7). A copy of the memorandum and a list of all who received it shall be sent to the Division no later than September 3, 2004.